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TECHNOLOGY CENTER 2100

In re Application of: Krueger)
Application No. 09/639,385) DECISION DENYING PETITION TO
Attorney Docket No. 5437-015CIP) WITHDRAW HOLDING OF
Filed: August 14, 2000) ABANDONMENT UNDER 37 CFR
For: APPARATUS, METHODS, AND) §1.181
COMPUTER PROGRAM PRODUCTS FOR)
FILTERING INFORMATION)

This is a decision on the request for reconsideration, filed September 9, 2005 on the petition under 37 CFR §1.181, filed March 1, 2005 requesting the Withdrawal of the Holding of Abandonment of the above-identified application. The original petition was dismissed in a decision mailed on August 30, 2005. This application was held abandoned for failure to timely respond to the Office action mailed November 19, 2003. A Notice of Abandonment was mailed on July 13, 2004.

The petition is **GRANTED**.

According to the MPEP §711.03(c), the showing required to establish non-receipt of an Office action includes the following:

- 1) a statement from practitioner that the Office action was not received,
- 2) a statement from practitioner that the file jacket and docket records were searched,
- 3) a copy of the docket record at the address of record, and
- 4) a reference to the docket record in the practitioner's statement.

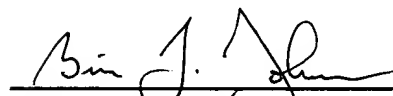
Petitioner's resubmission again asserts that the Office action of November 19, 2003 was not received, however, the resubmission fails to provide the required evidence highlighted above (items 2-4) and as discussed in the decision mailed August 30, 2005. For items 2-3, Petitioner asserts that *prima facie* evidence that the Applicant did not receive the Office action of November 19, 2003 is "set in the fact that the USPTO mailed the Office action to the prior attorney of record, and not to the undersigned [attorney submitting the petition]. Consequently, it is not necessary to prove that we did not receive the Office action, as from the USPTO's records themselves, it is evident that the Office action was not mailed to the undersigned".

In support thereof, Petitioner's evidence that the November 19, 2003 Office action was not mailed to the proper address includes a copy of MPEP § 403 (Revision February 2003) and PTO/SB/121 (10-00); also, reference is made to the following: a transmittal letter; a combined statement under 37 CFR 3.73(b) establishing right of Assignee to take action and power of attorney by Assignee of entire interest and revocation of prior powers; a listing of applications (Appendix A); and a change of address (all referenced documents filed April 8, 2003, by hand delivery as evidenced by the RECEIVED stamp "TC 2100" and previously filed with the petition submission of March 1, 2005).

In light of the evidence provide, specifically MPEP § 403, Customer Number Practice outlined in the Feb. 2003 edition, applicant's timely submission of the combined statement under 37 CFR § 3.73(b), power of attorney and change of address, filed on April 8, 2003, appears to have been in compliance and should have been entered into the file.

Petitioner evidence has established non-receipt of the Office action. Accordingly, the petition is **GRANTED**. The power of attorney and correspondence address have been updated as per the April 8, 2003 filing.

The application is being forwarded to the Supervisory Legal Instruments Examiner with instructions to **WITHDRAW** the holding of abandonment, before **Redating/Remailing** the (11/19/03) non-final Office action to the Applicant.



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